# In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-767

BUDDIES SUPERMARKETS, INC., PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

1. The Board found that petitioner ("the Company") violated Section 8(a)(1) of the National Labor Relations Act (Pet. 2) by warning employees that selection of the Retail Clerks International Association ("the Union") could result in discharges and a reduction of work hours; admonishing an employee to remove his union button or risk discharge; questioning employees as to how they voted in a Board-conducted representation election; and threatening changes in working conditions in reprisal for the employees' support of the Union (A. 2-6, 39-40).[1] The

[1] "A." refers to the appendix to the briefs in the court of appeals.

Board ordered the Company to cease and desist from the unfair labor practices found and to post appropriate notices at its stores in Dallas and Tarrant Counties, Texas (A. 4, 6–8, 47–49).[2] The court of appeals enforced the Board's order (Pet. App. 9).

2. Petitioner does not contest the Board's findings that it violated Section 8(a)(1) of the Act. Petitioner's sole contention is that the Board improperly ordered it to post notices to its employees in all of its retail stores in Dallas and Tarrant Counties, Texas, when unfair labor practices were found to have occurred in only certain of these stores. This issue does not warrant further review. In any event, petitioner failed to file with the Board an exception to the posting requirement contained in the Trial Examiner's recommended order, and accordingly judicial review of that issue is foreclosed.[3] Petitioner excepted to the Trial Examiner's order only on the ground that it "is not supported by substantial evidence on the entire record and is contrary thereto and to the law in each of its several particulars including Appendix A [the notice to employees]" (Pet. App. 14). This failed to provide adequate notice to the Board that the Company intended to contest the breadth of the posting requirement. See *Marshall Field &*

[2] The Company has 53 stores in those counties. All of these stores were involved in the representation election which was set aside by the Board because of the unfair labor practices found herein and other objectionable conduct. (A. 10, 11–12, 40–46.)

[3] Section 10(e) of the Act provides, in part, that "No objection that has not been urged before the Board * * * shall be considered by the court [of appeals] * * *."

*Co.* v. *National Labor Relations Board*, 318 U.S. 253, 255; *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344, 350.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

PETER G. NASH,
*General Counsel,*
*National Labor Relations Board.*

JANUARY 1973.

U.S. GOVERNMENT PRINTING OFFICE: 1973